



## Power to relax, not tax - The three Foundational Jurisprudential Lessons

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**GERMANE:** *Supreme Court Judgment Re ADANI POWER LTD AND ANR Vs UNION OF INDIA AND ORS* [2026-TIOL-01-SC-CUS](#)

Justice is not an abstract notion but a vital, concrete right that must be protected. Administration of justice is based on fundamental principles, including, inter alia, the principles of judicial discipline and rational use of power. Time and again, the highest Courts of the country reiterated various lessons for effective and efficient administration of justice. In this article, we are talking about the following three lessons:

### These three lessons are:

- I. Limits of delegated legislation in matters of taxation;
- II. Discipline of judicial precedent;
- III. Obligation of the State to give effect to judicial declarations instead of reasserting.

### I. Limits of delegated legislation in matters of taxation

I.1 A notification may be issued by the executive under the powers vested by law, being a delegated legislation. Section 25 of the Customs Act empowers the Central Government to exempt, in whole or in part, goods from duty, that is otherwise leviable. That provision is beneficent in nature and neither, by any way means, extends to creation of fresh levy, nor empowers to create a fresh levy in the first place. In short, **it is a power to relax, not tax.**

I.2 If an exemption notification is used to impose duty, it may be considered a colourable exercise of the delegated legislation. Therefore, the Union cannot, under the guise of exercising power of exemption, introduce a new levy that does not have sanction of Statute. Any such notification is, therefore, beyond the source of power and is a colourable exercise of delegated authority.

I.3 A delegate cannot do indirectly what it has no authority to do directly. The power to exempt is not a power to tax. The two stand on opposite constitutional planes. The essential legislative function of imposing a tax or duty rests with Parliament and must be located in a charging provision. The executive cannot, by subordinate instrument, enlarge the field of taxation under the pretext of tailoring an exemption.

I.4 Retrospective fastening of a levy violates the discipline of Article 265 of the Constitution which declares that no tax shall be levied or collected except by authority of law. The executive could not, by subordinate legislation, retrospectively cast a tax liability for a past period, absent of a clear charging sanction from

Parliament.

I.5 Delegated legislation is subject to judicial review not only for substantive unreasonableness, but also for a purpose. Where the dominant purpose for which a delegated power is conferred is departed from, and the power is pressed into service to achieve an end for which it was never granted, the exercise is ultra vires. The immunity of a fiscal notification from scrutiny is no greater than that of any other form of subordinate legislation.

## **II. Discipline of judicial precedent**

II.1 Doctrine of finality in adjudication, and the principle that litigation must at some stage come to an end, requires judicial discipline to be followed in substance and not permit executive re-litigation of what has already been decided, unless any new statutory basis arises creating new cause of action.

II.2. Hon'ble Supreme Court, in *State of Uttar Pradesh v. Ajay Kumar Sharma (2016) 15 SCC 289*, has emphasized that judicial discipline is not procedural etiquette but a structural safeguard against judicial inconsistency. The discipline of stare decisis ensures coherence and predictability in law, which are indispensable to the legitimacy of adjudication. Once a coordinate Bench of any Court has settled a question of law, a subsequent Bench of equal strength is bound to follow that view when confronted with the same issue. If the latter Bench believes that the earlier view is so manifestly erroneous or inapplicable that it ought not to be followed, the latter Bench must refer the matter to a larger Bench for reconsideration. What it cannot do is to side step or whittle down the earlier pronouncement by confining it artificially or by treating it as a fact-specific indulgence.

II.3 The discipline of precedent is not a matter of personal predilection; it is an institutional necessity. Stare decisis et non quieta movere which means to stand by what is decided and not to disturb what is settled, is a working rule which secures stability, predictability and respect for judicial outcomes. The law cannot change with the change of the Bench.

## **III. Obligation of the State to give effect to judicial declarations instead of reasserting**

III.1 Judicial pronouncements are not advisory opinions; they are binding commands of law. When the executive continues to enforce, under new guise, a levy that has been judicially struck down, it acts in defiance of constitutional discipline and erodes public confidence in the rule of law. Finality of adjudication is an essential component of good governance. The repetition of an invalidated levy through successive notifications compels needless litigation, burdens the courts, and subjects citizens to prolonged uncertainty.

III.2 Supreme Court, while exercising jurisdiction under Article 136, and the High Court, while exercising jurisdiction under Article 226, have granted appropriate relief ensuring that what has been declared unlawful is not brought back in another form.

III.3 Once a Court of competent jurisdiction declares a levy to be ultra vires and unconstitutional, that declaration cannot be treated as a one-time indulgence for a closed period and remains effective in perpetuity unless a new statutory basis created. It is incumbent upon the authorities thereafter to conform their conduct to the law so declared. They cannot, inconsistent with constitutional discipline, continue to enforce the same levy for a later period on the strength of slightly altered subordinate instruments and then resist restitution on grounds of technical pleading. The obligation of the administration is to give full effect to judicial decisions once they have attained finality. The authority of the rule of law rests not only in the pronouncement of judgments but equally in their proper implementation.

III.4 The doctrine interest *reipublicae ut sit finis litium* means, that it is in the public interest that there be

an end to litigation. So, the State must exemplify obedience to judgments, not resistance to them.

The above three lessons may ensure expeditious justice, especially in taxation justice, reduce burden on the courts, bring certainty in law & implied law, fillip business & trade, build trust, impose confidence in the public at large and bridge executive & judiciary.

**[The views expressed are strictly personal.]**

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